

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH JOHNSAIL GRISHAM,

Defendant-Appellant.

UNPUBLISHED

October 13, 2009

No. 286836

Muskegon Circuit Court

LC No. 07-055258-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I concur in the affirmance of defendant's conviction for the reasons set forth in the lead opinion. I also concur in the lead opinion's conclusion as to all sentencing issues except as to the issue of whether the trial court abused its discretion in ordering that the sentences be served consecutively.

The trial court had discretion to order that the 46 months to 15 year sentence and the 58 months to 15 year sentence be served concurrently or consecutively. Given the fact that the sentence lengths were largely determined by the guidelines, I believe that the decision whether to impose them consecutively or concurrently was the most significant aspect of the sentencing left to the trial court's discretion.

The majority is correct that there appear to be neither cases which set forth what standards, if any, apply to the exercise of that discretion nor any cases that define what record must be made in this regard. The majority concludes, therefore, that so long as the court recognized it had discretion, we should conclude that such discretion was not abused. I would conclude that when a trial court is directed to exercise its discretion, the court should articulate the reasons upon which it relied.

A trial court has discretion to sentence outside the guidelines, but must state its reasons for doing so in on the record to permit a reviewing court to determine if the court abused its discretion. *People v Smith*, 482 Mich 292, 303-304; 754 NW2d 284 (2008). Consistent with that approach, I believe that where the sentencing court has discretion to sentence consecutively or concurrently, it should state on the record what about the offense or the offender led to that decision. Otherwise, there is no basis upon which a reviewing court can determine if discretion was abused.

I do not suggest what factors should or should not be considered, as I would think such factors would have to emerge through case-by-case development. However, I believe that in this case, the trial court erred by not explaining its decision. Accordingly, I would remand for the limited purpose of articulation of its reasons.

/s/ Douglas B. Shapiro